IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/12/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

C.R.P.No. 513 of 2001

National Insurance Co.Ltd.
By its Branch Manager
Anguvilas Building
North Car Street
Nagerkoil
Nagerkoil Village
Agastheeswaram Taluk
Kanyakumari District. ... Petitioner

-Vs-

1.R.V.Das
2.P.Arumugam
3.A.Shanmugam
4.A.Murugan
5.Karunagaran
6.A.Radha
7.A.Saradha
8.A.Gomathi
9.V.Rajesh ... Respondents

This civil revision petition is filed under Article 227 of the Constitution of India praying for the relief as stated below.

For petitioner : Mr.N.Vijayaraghavan
For respondent1: Mr.M.Chidambaram

For respondents 3-8:Mr.S.Subbiah

:O R D E R
This Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the orders made in I.A.No. 153 of 19 98 in M.C.O.P.No. 7 of 1998 dated 28-06-2000 on the file of Motor Accidents Claims Tribunal, Additional District Court, Nagerkoil.

2. Today, when the above matter was taken up for consideration, on a perusal of the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the respondents 2 to 8 herein, as petitioners have filed a petition in M.C.O.P.No. 7 of 1998 on the file of the Motor Accidents Claims Tribunal, Additional District Court,

Nagerkoil, praying to award a compensation of Rs.1,50,000/- with interest at 12% from the date of accident, till the date of realization, with costs. The M.A.C.T. passed an award for Rs.69,500/- to the petitioners towards compensation with interest at 12% per annum from the date of petition till the date of realization with proportionate costs. The respondents 1 and 2, who are the driver and owner respectively of the vehicle are jointly and severally liable to pay the aforesaid compensation to the petitioners. As per the above award, first petitioner would be entitled to Rs.39,500/- and petitioners 2 to 7 would be entitled to Rs.5,000/- each. The petition against the third respondent, which is the Insurance Company is dismissed, without costs.

3. The second respondent in the M.C.O.P., who is the owner of the vehicle filed a Review Application in I.A.No. 153 of 1998 praying to review the order dated 22-9-1998 in the M.C.O.P.No. 7 of 1998, by exonarating him from paying any compensation amount and fastening the liability on the Insurance Company, the third respondent in M.C.O.P. for payment of the compensation amount awarded in the claim petition. The Additional District Judge, Nagercoil, allowed the said I.A. holding that the respondents in M.C.O.P. are jointly and severally liable to pay the compensation amount and it is only testifying the validity of the said order the ninth respondent in the Review Application I.A.No. 153 of 1998, as petitioner has come forward to file the above Civil Revision Petition praying to invoke the powers conferred under Article 227 of the Constitution of India.

4. The learned counsel for the petitioner herein would cite two judgments, of which, in the first one rendered by the Supreme Court in RAJENDRA KUMAR AND OTHERS Vs. RAMBHAI AND OTHERS, reported in 2002 ACJ 1822, wherein it is held by their Lordships:

"On perusal of the order under challenge it is clear that the High Court without considering the question whether the judgment/order sought to be reviewed suffered from any error, entered upon the exercise of reappreciating the evidence and on such reappreciation of evidence redetermined the compensation by reducing the amount to the extent noted earlier".

The second judgment rendered in KUMAR (MINOR) Vs. NATIONAL INSURANCE CO.LTD., reported in 2002-4-L.W. 691, wherein it is held by a Division Bench of this Court :

"The driving licence which the driver is required to hold when the motor vehicle is used in a public place is the licence to drive the particular type of vehicle and not merely the licence to drive any other type of vehicle. The classification of vehicles in the Act is such that though the heavy passenger vehicle as also the heavy goods vehicle are transport vehicles, nevertheless they form distinct categories and the licence which a person intending to drive these vehicles is required to obtain is a license issued with reference to the particular class of vehicle. A licence issued which permits the driving of a heavy passenger vehicle is not a licence issued for the purpose of driving a heavy goods vehicle. Even though it may appear that a person, who knows how to operate the controls of a heavy motor vehicle and has been driving a heavy vehicle which carries passengers, would have the necessary

skill to drive a heavy goods vehicle, the driving of the heavy goods vehicle by a person who does not possess a licence which enables him to drive that type of vehicle would be a breach of Section 3 of the Motor Vehicles Act. For the purposes of the Act, such a person cannot be regarded as one who had the valid or effective Driving Licence.

The learned counsel would submit that since the first respondent herein, who is the owner of the vehicle does not possess a valid licence, he is liable to pay the compensation amount and hence, would pray to allow the revision petition.

5. On the contrary, on the part of the learned counsel appearing on behalf of the respondents, particularly the first respondent would sail along with the order passed by the lower Court in Review Application in I.A. No. 153 of 1998 dated 28-06-2000, wherein on an elaborate consideration of the questions involved for the purpose of review, the trial Court would ultimately arrive at the conclusion to allow the said Review Application and would review its own order to the effect that the respondents 1 to 3 therein are responsible jointly and severally to pay the compensation amount granted in favour of the petitioners in M.C.O.P.No. 7 of 1998, as per its order dated 22-09-1998.

6. The Insurance Company, the petitioner in the above Civil Revision Petition and ninth respondent in the Review Application and third respondent in the main M.C.O.P. has filed the above Civil Revision Petition on grounds such as that the lower Court ought not to have allowed the Review Application; that the lower Court has virtually sit on Appeal in deciding Review application in I.A.No. 153 of 1998 against its own judgment, which is impermissible in law; that the lower Court has mechanically allowed the Review Application; that the lower Court ought to have seen that the proper remedy for the first respondent lay only on Appeal against the award made in M.C.O.P.No. 7 of 1998 dated 22-9-1998. On such grounds, the petitioner/the Insurance Company in the above Civil Revision Petition has come forward to file the same seeking to set aside the order passed by the lower Court in review as unsustainable in law.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, particularly in application of the norms of law as propounded by propositions broughtforth on the part of the petitioner in the reported judgments cited supra, this Court is able to find that it is an order that has been passed by the lower Court, i.e., the trial Court on a review of its own judgment passed in M.C.O.P.No. 7 of 1998 dated 22-0 9-1998 at the request of the petitioner therein, who was the owner of the vehicle against whom the award had been passed resulting in the first respondent herein, the said owner having taken out the Review Application before the lower Court seeking the relief of requiring the Insurance Company as the responsible party to pay the award passed by the lower Court in favour of the petitioners in the M.C.O.P. and the Review Court having conducted an enquiry has passed its order requiring the respondents 1 to 3 in the M.C.O.P. be responsible to pay the award amount in the ratio held in the M.C.O.P. award and it is aggrieved

against the said order, the Insurance Company has come forward to file the above Civil Revision Petition.

8. Either the pleadings or the judgment cited on the part of the petitioner against the review order passed by the lower Court is applicable to the case in hand in the sense that it is not the facts or the merits regarding the application of the norms of law or the evidence in the context of the facts and circumstances of the case that has been either discussed or appreciated, muchless in evidence, but only to the extent that it is required to review its own order in determining those parties, who are responsible for paying the award of compensation passed and therefore, the lower Court having found some error apparent has occurred on the face of its own order in requiring the parties to pay the award amount, has ultimately come forward to rectify the error and it is not amounting either to reappraisal or reappreciation of the evidence and therefore, this Court does not find anything has gone wrong legally with the order passed by the lower Court in the Review Application in I.A.No. 153 of 1998 on its file in M.C.O.P.No. 7 of 1998 and therefore, it is only desirable on the part of this Court to exercise no interference into the merited order passed by the lower Court in reviewing its own order made in M.C.O.P.No. 7 of 19 98, as per its order dated 22-09-1998 and hence, the following order.

In result,
i.the above Civil Revision Petition does not merit acceptance and only becomes liable to be dismissed and the same is dismissed accordingly;

ii.the order dated 28-06-2000 made in I.A.No. 153 of 1998 in M.C.O.P.No. 7 of 1998 by the Motor Accidents Claims Tribunal, Additional District Court, Nagerkoil, is confirmed;

iii. there shall be no order as to costs.

Index: Yes
Internet: Yes

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To

The Additional District Judge,
M.A.C.T., Nagerkoil.

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